IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINETH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24341 of 2004

Between:

V.Srinivas, S/o.Late Sri V.K.Sarma,
National Water Development Agency, Hyderabad.

..... PETITIONER

AND

1 Union of India, rep.by its Secretary, Ministry of Water Resources, Shram Shakti Bhavan, New Delhi.
2 The National Water Development Agency, rep.by its Director General, 18-20, Community Centre Saket, New Delhi-110017.
3 The National Water Development Agency, rep.by its Chief Engineer, South, 39, National Water Development Agency, Shantinagar,

Hyderabad-28.
4 The National Water Development Agency, rep.by its Executive Engineer, Investigation Division, Allahabad, Utter Pradesh.
5 Sri K.Srihari, S/o.and age not known to petitioner,
Junior Accounts officer, office of the Executive Engineer, Investigation Division, 637, 1st floor, Dt.Ramaswamy salai, K.K.Nagar, Chennai-600078.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction, more particularly one in the nature of writ of certiorari: a) Call for the records relating to and connected with order No. 8/86/2003-Admin.3565-77, dated 20-12-2004 and quash the same to the extent that it seeks to transfer the petitioner to Allahabad by holding it as arbitrary, illegal and issued in violation of the guidelines framed under order No.5/159/96-Admin., dated 17-08-2000: and consequently b) Direct the respondents to continue the petitioner in service at Hyderabad.

Counsel for the Petitioner: MR.P.S.RAJASEKHAR

Counsel for the Respondents: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 24341 of 2004

O R D E R:

Challenging the proceedings in Order No.8/86/2003-Admn./3565-77 dated 20.12.2004 to the extent of transferring the petitioner to Allahabad as illegal and arbitrary, the present writ petition is filed.

The petitioner was appointed as Lower Division Clerk in the office of the Central Water Commission in the year 1978. He was on deputation with the 2nd respondent with effect from 25.1.1983. In pursuance to the notification issued by 2nd respondent seeking to fill up the post of Upper Division Clerk, the petitioner was selected and appointed w.e.f. 26.5.1984. Thereafter he was promoted as Junior Accountant w.e.f. 10.8.1990. While so, vide proceedings dated 3.1.1997 the 2nd respondent transferred him to Madhya Pradesh. As such he joined on 10.1.1997. Thereafter he made a representation to transfer him to Hyderabad. After completion of 5 years of service at Bhopal, he was transferred in public interest vide proceedings dated 15.4.2002. Thereafter the 2nd respondent vide proceedings No.8/86/2003-Admn/738-47 dated 23.9.2004 transferred one K.

Srihari from Chennai to Allahabad and P. Venkat Rao from Allahabad to Chennai. Thereafer K. Srihari who is a Junior Accounts Officer, was also relieved vide order dated 10.11.2004 and was directed to report at Allahabad. Both the above individuals have completed five years of service in their respective postings. While so, to the astonishment of the petitioner, the 2nd respondent vide orders dated 20.12.2004 modified the orders dated 23.9.2004 and by virtue of the said orders the petitioner is sought to be transferred to Allahabad. He made a representation to the 2nd respondent on 24.12.2004 but the same was not considered. Challenging the same, the present writ petition is filed.

Respondents filed counter affidavit admitting that the petitioner was a direct recruitee having joined as U.D.C. in National Water Development Agency (NWDA) on 26.5.1984 in response to the post advertised by respondent-NWDA and thereafter he was promoted as Junior Accountant in the year 1990 at Hyderabad. One Junior Accounts Officer and one Junior Accountant were working at Hyderabad while Bhopal division was functioning without Junior Accounts Officer/Junior Accountant. Therefore, the present petitioner who was working at Hyderabad since 1990 was transferred from Hyderabad to Bhopal in January, 1997. He joined at Bhopal in the same year. On completion of 5 years at Bhopal, his request was received and he was transferred from Bhopal to Hyderabad in the year 2002. While so, one P. Venkat Rao, who was working at Allahabad, had requested for his transfer from Allahabad to Chennai, on completion of six years. Looking to his difficulties, his request was considered by the competent authority for his transfer from Allahabad

to Chennai to accommodate Venkat Rao at Channai. K. Srihari was transferred to Allahabad where at that time Chief Engineer Office and one division were located. Thereafter, as per the decision of the Government, the Chief Engineer Office was shifted from Allahabad to Lucknow and it was felt that the work can be managed by a lower rank accounts person like Junior Acountant. K. Srihari represented for retention at Chennai on medical grounds and in case if that was not possible, to post in South Region. There was also need to post a Senior Accounts Officer at Hyderabad. Therefore, he was transferred from Chennai to Hyderabad by transferring the petitioner from Hyderabad to Allahabad. It is further stated that the representation dated 24.12.2004 of the petitioner has been considered sympathetically but the same was rejected on administrative grounds since 2 persons cannot be posted against one sanctioned post and all these transfers and modifications are based on the optimum utilization of man power and in exigencies of work. With regard to para 5 of DOPT OM dt.12.6.1997 it is stated that as far as possible the husband and wife should be posted at the same station, but however this is subject to constraint of administrative convenience and therefore the writ petition is devoid of any merit.

Learned counsel for the petitioner contended that as per the guidelines an officer belonging to any group who has worked for a continuous period of 5 years at a particular station can opt for his transfer to a place of his choice and on such request of the petitioner, he was shifted and he cannot be once again transferred before expiry of 5 years. As per the guidelines of posting, the wife and husband shall be posted at the same station to enable them to lead normal family life and to ensure the education and welfare of their

children. At the instance of K. Srihari, the petitioner was disturbed and hence he prays to set aside the impugned proceedings.

On the other hand, learned counsel for the respondents contended that out of 20 years of service the petitioner worked for most of the time at Hyderabad; that the present transfer is bona fide exercise of power on administrative grounds; that though the wife and husband should be posted at the same station, but that does not confer any right and it is subject to administrative convenience and therefore there are absolutely no grounds to interfere with the impugned proceedings.

The National Water Development Agency vide its proceedings No.5/157/96-Admn. Dated 17.8.2000 issued guidelines for transfer of officers and staff in NWDA. As per these guidelines, an officer belonging to any group who has worked for a continuous period of 5 years at a particular station, can opt for his transfer to a place of his choice and his request for such transfer may be considered subject to the condition that the person to be transferred in his place has also a continuous stay of 5 years at that station and is the longest stayee on the basis of station seniority and such transfers which will be considered to be in public interest will not be automatic and be claimed as a matter of right but subject to the exigencies of work. It is also required to notice that as per the guidelines the transfer of officials who have requested for transfer may be considered before the stipulated minimum period of 5 years stay at a place, when no substitute is required and there are no consequential transfers on this count. In the first instance, admittedly one K. Srihari, Junior Accounts Officer, was transferred from Chennai

to Allahabad. In the same proceedings, one P. Venkata Rao, Jr. Accountant was also transferred from Allahabad to Chennai. But, as per the proceedings dated 10.11.2004, K. Srihari was relieved so as to report duty at Allahabad. Thereafter, the impugned proceedings have been passed on 20.12.2004 transferring K. Srihari from Chennai to Hyderabad and the petitioner from Hyderabad to Allahabad and one P.V. Rao from Allahabad to Chennai.

There cannot be any dispute that the transfer of an employee is not only an incidence of service but also one of the service conditions. It is not a case of transferring the petitioner by way of punishment. No mala fides are attributed against the transferring authority. Though a vague attempt has been made by the learned counsel for the petitioner that at the instance of K. Srihari the impugned proceedings have been issued, there is no such tangible allegation levelled against K. Srihari or that Srihari influenced the transferring authority in effecting his transfer from Chennai to Hyderabad. So, it is not a case of mala fides attributable to the transferring authority, because, according to the respondents it is only purely on administrative reasons. No doubt, the wife of the petitioner is working at Hyderabad and as per the Rules both have to be accommodated at the same place but that does not confer any indefeasible right on the petitioner to remain at Hyderabad on the ground that his wife is working at Hyderabad. Posting of wife and husband at the same place is subject to constraint of administrative convenience. So also, the guidelines do not confer any right on the petitioner to remain at Hyderabad till he completes a continuous period of 5 years. No statutory rule governing the service conditions of the petitioner with respect to transfers have been brought to the

notice of this court that the impugned proceedings are completely contrary to the Rules. It is brought to the notice of this court by the learned counsel for the petitioner that the Chief Engineer South forwarded the application for cancellation of the transfer orders of the petitioner from Hyderabad to Allahabad on the ground that for finalisation of Accounts, Monitoring expenditure, budget allocation etc. a JAO/JA is very much essential. But, according to the respondents there was need to post a Senior Accounts person at Hyderabad in view of working of multiple offices at Hyderabad. So, due to exigencies of work the petitioner was transferred from Hyderabad to Allahabad. Even the letter addressed by the Chief Engineer dated 7.1.2005 does not confer any right on the petitioner because it is for the Director General, NWDA to take appropriate decision for cancellation of the transfer orders of the petitioner from Hyderabad to Allahabad.

Since the impugned proceedings are not shown to have been issued contrary to the rules governing the service conditions of the petitioner or by way of punishment or with any malice on the part of the transferring authority, this court is of the opinion that the petitioner cannot challenge the said proceedings when it is made on administrative grounds.

The writ petition is devoid of merit and is accordingly dismissed.

K.C. Bhanu, J.

Date: --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Union of India, , Ministry of Water Resources, Shram Shakti Bhavan, New Delhi.
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